

**STATE OF MICHIGAN  
SUPREME COURT**

**APPEAL FROM THE MICHIGAN COURT OF APPEALS  
JUDGES, PAT M. DONOFRIO, P.J., JANE E. MARKEY and DONALD S. OWENS**

**SAL-MAR ROYAL VILLAGE LLC,**

Plaintiff/ Appellee,

-vs-

**MACOMB COUNTY TREASURER,**

Defendant/ Appellant.

Supreme Court No. 147384

Court of Appeals No. 308659

Lower Court No. 2011-004061-AW

DAVID MARMON (P33155)  
Hoffert & Associates, P.C.  
Attorney for Plaintiff/ Appellee  
32255 Northwestern Highway, Ste. 290  
Farmington Hills, MI 48334  
(248) 702-6100

FRANK KRYCIA (P35383)  
Asst. Macomb County Corp. Counsel  
Attorney for Defendant/Appellant  
Macomb County Treasurer  
One South Main Street, 8th Floor  
Mount Clemens, MI 48043  
(586) 469-6346

**APPELLANT, MACOMB COUNTY TREASURER'S,  
BRIEF IN REPLY TO PLAINTIFF APPELLANT'S  
RESPONSE BRIEF ON APPEAL**

**ORAL ARGUMENT REQUESTED**

**PROOF OF SERVICE**



## TABLE OF CONTENTS

INDEX OF AUTHORITIES .....	i
----------------------------	---

### ARGUMENTS

I. ....	1
---------	---

REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S FIRST  
ARGUMENT, THAT THE IMPOSITION OF INTEREST ON DELINQUENT  
TAXES IS MANDATED BY STATUTE.

II. ....	7
----------	---

REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S THIRD  
ARGUMENT: THAT THE TAX TRIBUNAL HAS EXCLUSIVE  
JURISDICTION TO RESOLVE ERRORS OR MISTAKES ON TAX BILLS.

III. ....	8
-----------	---

REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S SECOND  
ARGUMENT: THAT DEFENDANT WAS NOT IN PRIVITY WITH MACOMB  
TOWNSHIP FOR PURPOSES OF WAIVING INTEREST AND FEES UNDER  
MCL 211.78a(3).

CONCLUSION .....	10
------------------	----

## INDEX OF AUTHORITIES

### Cases

<i>Alexandria LLC v Brownstown Township</i> , MTT Docket No. 448982 (June 18, 2014) (16b).....	7
<i>Ashland Twp v BAM Excavation</i> , docket no. 289723 (Mich Ct App 2010) (unpublished)(12b).....	5, 6
<i>Detroit Edison Company v City of Detroit</i> , MTT Docket Nos. 319829, 319830, 319831, 319832, 319833, 319834, 319840, 319841, 319842, 319844, 319845, 319847, 319848, 319869 and 319911, (April 5, 2011) (134a).....	8
<i>Hillsdale County Senior Servs v County of Hillsdale</i> , 494 Mich 46 (2013) .....	7
<i>Michigan Properties, LLC v Meridian Twp</i> , 491 Mich 518 (2012).....	2, 3
<i>Mikelonis v Township of Alabaster</i> , MTT Docket No. 382898, (March 21, 2011).....	4
<i>People v Clark</i> ___ Mich ___ (docket no. 147437, June 18, 2014).....	1, 2
<i>Prayer Temple of Love v Wayne County Treasurer (In re Petition of Wayne County Treasurer)</i> , 286 Mich App 108,113, 114; (2009) .....	5, 6
<i>State Treasurer v Eaton</i> , 92 Mich App 327, 329, 330 (1979) .....	5
<i>Wagner v Department of Treasury</i> , 224 Mich App 400,401 (1997).....	4
<i>Wikman v City of Novi</i> , 413 Mich 617 (1982) .....	3, 4

### Statutes

MCL 205.732(C) .....	1, 2
MCL 205.735a(6) .....	6, 7, 8
MCL 205.737(4) .....	4
MCL 211.59(3) .....	2
MCL 211.7cc(8) .....	2
MCL 211.78a(3) .....	1, 2, 3, 4, 5, 8, 9
MCL 769.1k(1)(b)(ii) .....	1, 2

**Court Rules**

MCR 2.205.....	9
----------------	---

**I. REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S FIRST ARGUMENT, THAT THE IMPOSITION OF INTEREST ON DELINQUENT TAXES IS MANDATED BY STATUTE.**

Defendant's first argument is that the Court of Appeals erred in finding that the Tax Tribunal could waive interest mandated by MCL 211.78a(3) in a tax appeal where the county treasurer was not added as a party. Plaintiff, in its response, does not dispute that the language in MCL 211.78a(3) is mandatory. Instead Plaintiff argues that the Tax Tribunal has expansive powers pursuant to MCL 205.732(C) which provides that the Tax Tribunal may enter other relief that it deems necessary or appropriate and accordingly the Tax Tribunal is not bound by MCL 211.78a(3) and can waive interest on lawfully assessed delinquent taxes. Plaintiff contends that MCL 211.78a(3) applies to county treasurers and they cannot "trump" the powers of the Tax Tribunal.

This Court recently considered a similar argument in *People v Clark*, \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (docket no. 147437, June 18, 2014). In *Clark* this Court interpreted MCL 769.1k(1)(b)(ii) which provides that at sentencing in a criminal case the court may impose "any cost in addition to the minimum state cost set forth in subdivision (a)." The circuit court in *Clark* imposed \$1,000 in costs to the court to reimburse the court for the cost of considering the case. *Clark*, slip op p 3 n3.

This Court noted that the right to impose costs in criminal cases was statutory and that the legislature provided that for certain offenses a court could require the defendant to pay for the cost of prosecuting the case, *Clark*, slip op pp 4-5, but the statute that the defendant was convicted of did not contain such a provision. *Id.* at p 7. This Court found that MCL 769.1k(1)(b)(ii) which allowed a court to impose any cost should be read *in pari materia* with the substantive legislation that defined crimes and

prescribe fines and costs related to those crimes. *Id.* at p 11 n8. This Court concluded that the term “any cost” in MCL 769.1k(1)(b)(ii) only authorized the sentencing court to impose only those costs the Legislature authorized by separate statute. *Id.* at p 9.

*Clark* is similar to this case as interest on delinquent taxes is statutory and this case involves interpretation of MCL 211.78a(3) in the General Property Tax Act, MCL 211.1 et seq., (GPTA) and MCL 205.732(C) in the Tax Tribunal Act. Pursuant to *Clark*, these two statutes should be read *in pari materia*. The Legislature also provided for the waiver of interest on delinquent taxes in limited instances, MCL 211.59(3) and 211.7cc(8). Plaintiff’s argument that MCL 205.732(C) grants the Tax Tribunal blanket authority to waive interest on properly assessed delinquent taxes would render these statutory exceptions nugatory. *Clark*, slip op pp 10-11. It is the duty of the courts to harmonize and recognize related statutes in a manner that does not leave the statutes without practical effect or meaning. *Id.* at p 11. Applying these principles to this case, this Court should uphold the legislative decision in MCL 211.78a(3) that interest on delinquent taxes is mandatory, not discretionary and reverse the Court of Appeals decision to the contrary.

Plaintiff also relies on this Court’s decision in *Michigan Properties, LLC v Meridian Twp*, 491 Mich 518; 817 NW2d 548 (2012) to support its position. *Michigan Properties* does not stand for the proposition that the Tax Tribunal can ignore or waive the requirements of the GPTA as Plaintiff argues. In *Michigan Properties*, this Court considered whether the Michigan Tax Tribunal has the same powers and duties as a March board of review to adjust previously entered erroneous taxable values for purposes of bringing the current tax rolls into compliance with the GPTA. *Id.* at 537-538.

This Court determined that the Tax Tribunal has the authority to carry out a March board of review's duty to correct a previous erroneous taxable value in order to adjust the current taxable value, thereby bringing the taxable value back into compliance with the GPTA. *Id.* at 543-544.

As noted by this Court in *Michigan Properties*, the Tax Tribunal has the authority to correct errors in assessments so that they comply with the GPTA. Plaintiff has failed to cite any authority that allows the Tribunal to act contrary to the mandates of the GPTA. MCL 211.78a(3) is in the tax reversion section of the GPTA. Therefore, pursuant to *Michigan Properties*, the Tribunal's order in Plaintiff's tax appeal should be interpreted as complying with MCL 211.78a(3) and the waiver of interest section of the consent order should only be applied to judgment interest on the portion of the assessment adjusted by the Tribunal, if applicable.

Plaintiff also relies on *Wikman v City of Novi*, 413 Mich 617, 629; 322 NW2d 103 (1982). In *Wikman* this Court found that the Tax Tribunal is a "quasi-judicial agency" designed to provide a forum in which taxpayers may obtain relief from adverse agency decisions and the primary functions of the Tax Tribunal are to find facts and review the decisions of agencies within its jurisdiction. *Id.* This Court found that the legislature granted the Tribunal jurisdiction to consider the validity of special assessments and that it was this Court's role to effectuate the legislative decision. *Id.* at 641.

In the instant case, there is no dispute that Plaintiff challenged the amount of the assessment on its property in the Tax Tribunal appeal. The "agency" decision appealed to the Tax Tribunal was the Macomb Township assessor's determination of state equalized value and taxable value for Plaintiff's property. Plaintiff has not cited any

authority that the March board of review may waive interest in properly assessed delinquent taxes. This case does not involve the Tribunal's determination of the taxable value of Plaintiff's property. The issue in this case is whether the Tribunal's order can be interpreted as waiving mandatory interest on taxes which were properly assessed.

As noted by this Court in *Wikman*, it is the role of this Court to effectuate legislative decisions if possible. In MCL 211.78a(3) the legislature decided that interest on delinquent taxes was mandatory unless a specific legislative exception applied. Plaintiff has failed to cite an applicable legislative exception and as noted in the application for leave to appeal there are few exceptions that would only apply to homestead property in limited circumstance.

In argument I. A. 2. of its brief, Plaintiff argues that parties routinely put waivers of interest in consent judgments in tax tribunal cases. Plaintiff fails to point out that these agreements involve judgment interest pursuant to MCL 205.737(4) and typically provide a limited waiver if the refund is paid within a certain period of time typically 28 days, similar to the language in the agreement at issue in this case. Plaintiff has failed to cite a case where such an agreement applied to interest required by MCL 211.78a(3) on properly assessed delinquent taxes.

Plaintiff also claims *Wagner v Department of Treasury (In re Wagner Estate)*, 224 Mich App 400, 401; 568 NW2d 693 (1997) and *Mikelonis v Township of Alabaster*, MTT Docket No. 382898, March 21, 2011, (50a) actually support Plaintiff's argument. Both of these cases involved appellate review of an agency's decision regarding the waiver of interest when the statute specifically granted the agency the discretion to waive interest on certain taxes. These cases only apply when the statute grants the discretion to waive



interest and when the agency that has the discretion is a party to the proceedings. In this case MCL 211.78a(3) does not grant discretion to waive interest and the Macomb County Treasurer was not made a party to the tax appeal. These cases were cited by Defendant to note this distinction and Plaintiff has failed to cite any authority to the contrary.

Plaintiff also argues the Tax Tribunal is the final arbiter of property tax disputes. If this were true, this Court would not have jurisdiction to determine the propriety of the Tax Tribunal's rulings. This Court is the final arbiter of such disputes.

In argument I. C. of its brief Plaintiff claims that Defendant is attempting to collaterally attack the Tax Tribunal's order. Plaintiff cites *State Treasurer v Eaton*, 92 Mich App 327; 284 NW2d 801 (1979); *Prayer Temple of Love v Wayne County Treasurer (In re Petition of Wayne County Treasurer)*, 286 Mich App 108, 114; 777 NW2d 507 (2009) and *Ashland Twp v BAM Excavation*, docket no. 289723 (Mich. Ct. App. 2010) (unpublished) (12b). Plaintiff claims the rulings in these cases stand for the proposition that a Tax Tribunal order cannot be collaterally attacked in Circuit Court. Plaintiff erroneously cites these cases, as they did not involve a collateral attack on a Tax Tribunal order.

In *Eaton* the State Treasurer was foreclosing on a tax lien and the property owner attempted to contest the validity of the assessment in Circuit Court. 92 Mich App at 329-330. The owner went to the Board of Review but did not file an appeal with the Tax Tribunal. *Id.* at 330. The Court held that the Circuit Court did not have jurisdiction to reduce the assessment as the Tax Tribunal had exclusive jurisdiction over the amount of the assessment. *Id.* at 334.

In *Ashland*, the township brought an action in district court for collection of personal property taxes. The taxes were not appealed to the Tribunal. The Court of Appeals held that the district court properly granted summary disposition to the township as the district court did not have jurisdiction to consider the validity of the assessment.

Likewise, in *Prayer Temple of Love*, the Wayne County Treasurer filed an action to foreclose on property taxes assessed to property owned by a church. In its brief Plaintiff suggests that the Tax Tribunal found that the property was not exempt and the Circuit Court improperly determined that the Tribunal's ruling was incorrect.

*Prayer Temple of Love* was not a collateral attack on a Tribunal order. A County Treasurer filed a foreclosure action in circuit court and the owner claimed the property was exempt from taxation as a church. The Circuit Court granted the owner's objections to the foreclosure finding the property was exempt. The Court of Appeals ruled that the circuit court did not have the jurisdiction in the tax foreclosure action to consider whether the property was exempt as such a determination was within the exclusive jurisdiction of the Tax Tribunal. 286 Mich App 113-114.

In this case Plaintiff is attacking a tax bill prepared by Defendant pursuant to the Tax Tribunal order. The Tax Tribunal has the exclusive jurisdiction to resolve disputes or correct mistakes in tax bills. MCL 205.735a(6). Plaintiff brought this action seeking an order of mandamus to correct the tax bill issued by Defendant. This is not a collateral attack on the Tax Tribunal's order.

**II. REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S THIRD ARGUMENT:  
THAT THE TAX TRIBUNAL HAS EXCLUSIVE JURISDICTION TO RESOLVE  
ERRORS OR MISTAKES ON TAX BILLS.**

This Court should note that Plaintiff changed the order of the issues this Court granted leave on. Plaintiff's second argument is actually a response to the third argument made by Defendant and involves whether this case is within the exclusive jurisdiction of the Tax Tribunal. Defendant's third argument is that while Plaintiff brought this action in circuit court alleging mandamus, Plaintiff is alleging that Defendant made a mistake in preparing the tax bill, and that the Tax Tribunal has exclusive jurisdiction to resolve disputes regarding tax bills pursuant to MCL 205.735a(6). Plaintiff responds by arguing that it brought this action for mandamus to enforce the Tax Tribunal order settling the assessment dispute with Macomb Township. Plaintiff argues that requiring it to proceed under MCL 205.735a(6) would place it in an endless merry-go-round of litigation and accordingly it should be allowed to file for mandamus in circuit court.

The parties recognize that this Court held in *Hillsdale County Senior Servs v County of Hillsdale*, 494 Mich 46; 832 NW2d 728 (2013) that the manner in which a claim is pled does not determine jurisdiction; jurisdiction is determined by reviewing whether the subject matter of the dispute is within the exclusive jurisdiction of the Tribunal pursuant to MCL 205.735a(6).

Plaintiff cites *Alexandria LLC v Brownstown Township*, MTT Docket No. 448982 (June 18, 2014) (12b) for the proposition that the Tax Tribunal does not have enforcement powers. In *Alexandria*, the parties agreed to a reduction in the taxable value of the subject property and the Alexandria LLC sold the property before the tax appeal was resolved. The new owner did not pay the 2011 winter taxes and when

Wayne County processed the tax tribunal order in March 2012, applied the refund to the delinquent 2011 taxes. The Tax Tribunal dismissed the case noting that it did not have jurisdiction to enforce its orders.

In *Alexandria*, there was no dispute as to the calculation of the refund. This case involves a dispute as to the calculations in a tax bill. Pursuant to MCL 205.735a(6) and *Detroit Edison Company v City of Detroit*, MTT Docket Nos. 319829, 319830, 319831, 319832, 319833, 319834, 319840, 319841, 319842, 319844, 319845, 319847, 319848, 319869 and 319911, (April 5, 2011) (134a) the Tax Tribunal has exclusive jurisdiction over disputes involving whether interest should be charged on a tax bill.

Plaintiff's complaint alleges that Defendant did not properly prepare the tax bill. Defendant contends the tax bill was proper and in accordance with the Tax Tribunal order and the GPTA. Plaintiff has failed to cite any authority that this dispute is not within the Tax Tribunal's exclusive jurisdiction.

**III. REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S SECOND ARGUMENT: THAT DEFENDANT WAS NOT IN PRIVITY WITH MACOMB TOWNSHIP FOR PURPOSES OF WAIVING INTEREST AND FEES UNDER MCL 211.78a(3).**

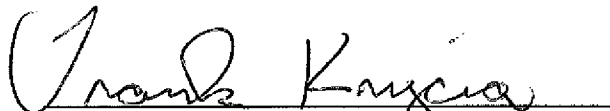
Plaintiff primarily relies on the Court of Appeals decision in this case to support its argument and Defendant's brief on appeal addresses the errors made by the Court of Appeals on this issue. Most of Plaintiff's argument is a failed attempt to use *reductio ad absurdum* by misstating Defendant's argument. For example on page 40 of its brief, Plaintiff claims that under Defendant's alleged reasoning a taxpayer could never bind a county in a Tax Tribunal proceeding if the county chose not to appear.

Defendant admitted that it was bound by the consent judgment's determination of true cash value on page 35 of his brief on appeal. This Court granted leave on the issue as to whether there was privity between the county and township for purposes of waiving interest and fees under MCL 211.78a(3). There is no dispute that in this matter interest pursuant to MCL 211.78a(3) was solely owed to the Defendant and that Plaintiff did not give Defendant notice during the tax appeal that Plaintiff was seeking waiver of this interest on the lawfully owing taxes and Plaintiff chose not to add Defendant as a party to the tax appeal. Requiring a litigant to name a necessary party to an action pursuant to MCR 2.205 would not significantly complicate every single appeal to the Michigan Tax Tribunal as argued by Defendant.

The terms of the consent judgment indicate that the agreement to waive interest was only between the parties, Plaintiff and Macomb Township. If Plaintiff was intending to waive interest solely owing to Defendant pursuant to MCL 211.78a(3), Plaintiff was required to give Defendant notice and add Defendant as a party to the tax appeal pursuant to MCR 2.205. As noted in Defendant's brief on appeal, Macomb Township has no role in operating the delinquent tax revolving fund and was not acting as Defendant's agent.

## CONCLUSION

Defendant, the Macomb County Treasurer, requests this Court to reverse the decision of the Court of Appeals and find that summary disposition was properly granted to Defendant by the Circuit Court and to dismiss this case.

A handwritten signature in cursive script, appearing to read "Frank Krycia", written over a horizontal line.

FRANK KRYCIA (P35383)  
Assistant Corporation Counsel  
Attorney for Defendant,  
Macomb County Treasurer

Dated: August 4, 2014